

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M), a California Corporation, and Roger Hunt and Andrea Hunt, as Individuals, for an Expedited Order Authorizing an Encroachment on a Certain Easement in Kern County Pursuant to Public Utilities Code Section 851.

Application 05-01-027
(Filed January 27, 2005)

O P I N I O N**1. Summary**

Pursuant to Pub. Util. Code § 851, we authorize an encroachment agreement between Pacific Gas and Electric Company (PG&E) and Roger and Andrea Hunt (Owners) that will permit Owners to construct a detached fabricated steel shop building extending into PG&E's easement on Owners' property in Kern County. PG&E's request that the Commission establish a streamlined process for approval of similar *de minimis* encroachment agreements is denied as inappropriate in this limited proceeding. This proceeding is closed.

2. Background

PG&E since 1958 has had an easement on Owners' property for installation and operation of transmission and distribution electricity facilities. The easement prohibits Owners from constructing a building in the easement area.

Owners acquired the property in 2002 and in September 2004 applied to Kern County for a permit to construct a detached 30-by-40 foot fabricated steel shop next to their existing single-family home and extending into a portion of the

easement area. When Owners contacted PG&E, they learned that the utility would need Commission approval before the proposed structure could be built, since it would encroach on the easement area.

PG&E states that it has determined that the detached building is some distance from and will not interfere with the utility's use and maintenance of its facilities in the easement area, and it agreed to join with Owners in seeking the Commission's expedited approval of an encroachment agreement. The application is brought under Pub. Util. Code § 851, which prohibits an encumbrance on utility property without Commission authorization.

Under the proposed encroachment agreement, attached to the application as Exhibit D, PG&E may terminate Owners' rights at any time upon 90 days' notice if PG&E, in its sole discretion, determines that Owners' use of the easement area is inconsistent with PG&E's operational needs. Upon such termination, Owners at their sole cost and expense would be required to remove all improvements that encroach on the easement area and restore the property to its pre-encroachment condition. The encroachment agreement would be recorded and would be binding on successors of Owners.

3. Public Interest

PG&E states that granting the encroachment agreement is consistent with the underlying purpose of Pub. Util. Code § 851. It states that the Commission has long held that "the relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is 'adverse to the public interest.'" (*See, e.g.,* Decision (D.) 03-01-084, quoting *Universal Marine Corporation* (1984) 14 CPUC 2d 644.) As the Commission recently stated: "The public interest is served when utility property is used for other productive purposes

without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058.)

PG&E states that granting the encroachment agreement will allow the property to be used for other productive purposes and will not interfere with the operation of PG&E's facilities.

4. Environmental Review

The California Environmental Quality Act (CEQA) requires any California government agency approving a discretionary project to consider the environmental impacts of its decisions. (Pub. Resources Code § 21080.) The definition of "project" includes any activity that "may cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment" and "involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resources Code § 21065.) Accordingly, the Commission typically is required to consider the environmental consequences of projects that are subject to the Commission's § 851 discretionary approval.

PG&E maintains that under Section 15305 of the CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000, *et seq.*), the Commission's approval of the proposed encroachment agreement is categorically exempt from CEQA. Section 15305 provides an exemption from environmental review for minor alterations in land use limitations, and sub-part (b) provides a specific exemption for the "[i]ssuance of minor encroachment permits." PG&E states that the use of the property to place the structure next to the Owners' house is also exempt from CEQA under CEQA Guideline § 15303(e), which provides an exemption for accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

Our examination of the application and its accompanying exhibits persuades us that the encroachment agreement qualifies as a “minor encroachment permit.” The encroachment agreement allows for a detached fabricated steel shop next to an existing personal residence, with an encroachment of only 21 feet into a 129-foot easement area, and it includes a termination provision that precludes any further encroachment. Therefore, we conclude that the encroachment is categorically exempt from the provisions of CEQA pursuant to CEQA Guideline § 15305(b), and that no Proponent’s Environmental Assessment is necessary with this application.

5. Discussion

Under Pub. Util. Code § 851, no public utility may transfer or encumber its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission’s authorization. The encroachment here is an encumbrance on utility property, but PG&E has shown that the encroachment serves a useful purpose and will not affect PG&E’s operation and maintenance of electrical facilities in the easement area. As noted, the public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to the public. Accordingly, we grant the application and authorize PG&E to enter into an encroachment agreement with Owners.

PG&E also requests that we establish a streamlined procedure for approval of minor encroachment agreements like this one. PG&E suggests that one approach would be for the utility to file an advice letter notifying the Commission of the proposed encroachment agreement, identifying the grantee, the location of the encroachment within the easement area and any applicable CEQA exemption.

While we agree that such a streamlined procedure may be possible and useful, it is not appropriate to adopt such a procedure in this limited application, where the only parties are PG&E and Owners. Presumably, other utilities and other entities would be interested in such an expedited procedure and would want to comment on it.

PG&E and Owners also have filed a motion for an expedited procedural schedule for this application. We deny this motion as unnecessary, since we have already expedited the consideration of this matter.

6. Categorization and Need for Hearings

In Resolution ALJ 176-3147, dated February 10, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. A public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3147 are affirmed.

7. Waiver of Review

This is an uncontested matter in which the decision grants the relief requested. The parties have agreed to waive review and comment as to the Commission's decisions regarding the requests for a streamlined procedure for encroachment matters and for an expedited procedural schedule. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of this Commission.

2. Notice of the filing of the application appeared in the Daily Calendar on February 11, 2005.

3. No protests have been filed.

4. Owners own property in an unincorporated area in Kern County that is subject to an easement for PG&E electrical transmission and distribution facilities.

5. PG&E has agreed to execute an encroachment agreement that would permit Owners to construct a steel shop that encroaches on part of the easement area.

6. The encroachment, which can be terminated by PG&E on 90 days' notice, will not affect PG&E's transmission and distribution facilities.

7. The encroachment agreement and the encroachment that it will permit will not adversely affect existing ratepayers.

8. CEQA Guideline § 15305(b) provides an exemption from CEQA review for minor alterations in land use, including the issuance of minor encroachment permits.

Conclusions of Law

1. A public hearing is not necessary.

2. The request for authorization of an encroachment and an encroachment agreement is subject to Pub. Util. Code § 851.

3. The project that the encroachment agreement would permit is exempt from CEQA requirements under CEQA Guideline § 15305(b).

4. Granting the encroachment agreement is in the public interest.

5. PG&E should be authorized to enter into the encroachment agreement attached to the application.

6. The order should be effective today to allow the proposed encroachment agreement to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may enter into the encroachment agreement attached to its application as Exhibit D to permit construction of a building that will encroach into part of a PG&E easement, as more fully set forth in the application and its exhibits, and subject to the terms and conditions described therein.

2. The authority granted herein shall expire if not exercised within one year of the date of this order.

3. Application 05-01-027 is closed.

This order is effective today.

Dated _____, at San Francisco, California.